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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL SOMMERS,

Plaintiff and Respondent,

v.

CREDIT COUNSELING CENTER,

Defendant and Appellant.

G041854

(Super. Ct. No. 30-2008-00104322)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane D. Myers, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michael I. Goode for Defendant and Appellant.

Ross & Wersching, Alan G. Ross and Eric J. Wersching, for Plaintiff and Respondent.

Credit Counseling Center, a California Corporation, appeals from an order denying its motion to vacate or set aside the order dismissing its appeal from a decision of the Labor Commissioner in favor of Michael Sommers. The appeal was dismissed because nobody appeared on behalf of Credit Counseling Center at the hearing. In its motion to vacate, Credit Counseling Center argued the dismissal should be vacated, and the appeal reinstated, because Thomas Anter, its president and sole owner, intended to be present at the hearing, but was prevented from attending due to unanticipated traffic problems during a lengthy drive from Arizona. Credit Counseling Center argues those circumstances constitute a “reasonable excuse” for missing the hearing, and justify an order vacating the dismissal. We disagree.

Even assuming Anter’s failure to be present when the appeal was heard could be viewed as excusable (although case law suggests that a reasonably diligent person in that situation would have at least contacted the court by telephone to advise it of the situation)¹, that conclusion would not entitle Credit Counseling Center to any relief in this case. What Credit Counseling Center ignores is the fact that, as a corporation, it was required to appear at the hearing *through counsel*. The presence of Anter, its nonattorney president, would not have qualified as an “appearance” of the corporation at the hearing even if he had managed to be there on time. Because the record reflects no effort to ensure that Credit Counseling Center, *itself*, would be present for the appeal hearing, the court did not err in refusing to vacate its dismissal of that appeal.

FACTS

Sommers filed a claim against Credit Counseling Center with the Labor Commissioner. In March of 2008, the Commissioner issued a ruling in favor of Sommers – awarding him wages of nearly \$40,000, plus interest and penalties totaling approximately \$12,000.

¹ See *Hall v. Bru* (1932) 216 Cal. 153

On March 18, 2008, Credit Counseling Center, through its attorney of record, filed an appeal of the Labor Commissioner's order in the superior court. A hearing was set for June 6, 2008. However, on May 14, 2004, counsel for Credit Counseling Center moved to be relieved. The court granted the motion, and continued the hearing to August 18, 2008.

On August 15, 2008, Sommers' counsel unilaterally submitted a "statement of compliance," which was required to be submitted jointly "by all counsel by noon the last court day before trial." Sommers' counsel explained that he had acted unilaterally "due to Credit Counseling Center's failure to obtain counsel to represent it in this case and its refusal to cooperate"

When the case was called for hearing on August 18, 2008, nobody appeared on behalf of Credit Counseling Center. Consequently, the court dismissed the appeal.

On October 20, 2008, Credit Counseling Center, through counsel, Michael Goode, moved to vacate the dismissal pursuant to Code of Civil Procedure section 473. It explained that Anter intended to appear at the hearing, but had been delayed by traffic en route from Phoenix, Arizona. According to Anter's declaration, he had left the Phoenix area at approximately 2:30 a.m., believing that would afford him sufficient time to arrive in Santa Ana by the scheduled hearing. Unfortunately, due to heavy traffic, Anter did not arrive at the court until approximately 10:00 a.m. – an hour after the hearing was scheduled – whereupon he was advised that the appeal had already been dismissed. Anter stated that he had attempted to contact the court clerk via cell phone during his drive, but had been unable to do so – apparently due to poor cell reception. Anter acknowledged he elected to continue driving rather than stopping to contact the clerk via pay telephone.

In his declaration, Anter also expressly conceded he had been advised by Credit Counseling Center's prior counsel that Anter could not represent the corporation

personally, because he was not a licensed attorney, and that he believed that to be the case.

Sommers opposed the motion. He argued that Anter's failure to either be present at the hearing, or call the court and explain his delay, was not excusable. But Sommers also pointed out that Anter's failure to appear was not relevant in any case: "Glaringly absent from Mr. Anter's declaration is any indication as to what he would have done even if he had arrived on time for trial. He readily acknowledges that he could not have represented [Consumer Counseling Center] because it is a corporation. Accordingly, even if Mr. Anter had arrived in court by 9:00 a.m., the case would properly have been dismissed anyway. A corporation's attempt to appear other than through counsel is treated as a failure to appear, and dismissal of the case is entirely proper. [Citation.]"

The court denied the motion to vacate the dismissal.

DISCUSSION

Credit Counseling Center argues the court abused its discretion in refusing to vacate the dismissal of its appeal pursuant to Code of Civil Procedure section 473.2 because Anter, its president, was unavoidably detained in traffic, and thus his failure to timely appear at the scheduled hearing was excusable. We are not persuaded.

As Sommers points out, Anter's presence at the hearing would have been irrelevant in any case. Credit Counseling Center is a corporation which cannot represent itself in litigation – and Anter is not an attorney – thus, *his* presence at the hearing, even if timely, would not have qualified as an "appearance" by Credit Counseling Center. "A corporation cannot represent itself in court, either in *propria persona* or through an officer or agent who is not an attorney." (*Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 199; see

² Code of Civil Procedure section 473, subdivision (b), provides in pertinent part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

also *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 730 [“A corporation cannot in fact appear in court *except* through an agent.”].) Thus, the court would have been unable to proceed with the hearing even if Anter had arrived on time. (*Van Gundy v. Camelot Resorts, Inc.* (1983) 152 Cal.App.3d Supp. 29.)

Moreover, Anter specifically acknowledged in Credit Counseling Center’s motion to vacate the dismissal that he had been advised by Credit Counseling Center’s prior counsel *he could not personally represent the corporation at any hearings*, and that he “believed that to be the case.” Yet Anter does not contend that he made any arrangements – or even attempted to do so – for an attorney to appear on the corporation’s behalf at the hearing. In other words, Anter *does not* claim that any “mistake, inadvertence surprise or excusable neglect” actually caused *Credit Counseling Center’s* own failure to be “present” at the appeal hearing it had sought.

Under those circumstances, the court did not err in refusing to vacate the dismissal of Credit Counseling Center’s appeal. The order is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O’LEARY, J.

MOORE, J.